## REMARKS/ARGUMENTS

Favorable reconsideration of this application, in light of the following discussion, is respectfully requested.

Claims 10 and 12-19 are pending; no claims are amended, newly added, or canceled herewith.

In the outstanding Office Action, Claims 10 and 12-19 were rejected under 35 U.S.C. § 103(a) as unpatentable over <u>Laumen et al.</u> (U.S. Pat. No. 6,396,423, hereafter <u>Laumen</u>) in view of <u>Wang</u> (U.S. Pat. No. 6,014,411). For the reasons discussed below, this rejection is respectfully traversed.

Independent Claim 10 recites, inter alia,

observing transmission conditions continuously to detect at least one dynamic parameter of the current transmission conditions ...

selecting dynamically as a function of the at least one dynamic parameter, a distribution of elementary coding step redundancies ....

Claims 12-19 depend from Claim 10.

The outstanding Office Action states at page 3 that <u>Laumen</u> discloses the claimed observing and dynamic selection steps. To support the assertion that <u>Laumen</u> discloses the claimed observing step, the outstanding Office Action cites to col. 1, line 60 - col. 2, line 44 of <u>Laumen</u>. More specifically, the Office Action indicates that it is relying upon the cyclic redundancy check or Reed-Soloman technique of error correction coding. However, there is no evidence in the record that either of these two error correction techniques include observing transmission conditions continuously to detect at least one dynamic parameter of the current transmission conditions.

In fact, the cited portion of <u>Laumen</u> does not disclose or suggest in any way observation of the transmission conditions to detect at least one dynamic parameter of the

current transmission conditions. Thus, it appears that the outstanding Office Action is alleging that the claimed step is inherent in <u>Laumen</u>.

As set forth in MPEP § 2112, the fact that a certain result or characteristic may occur be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534 (Fed. Cir. 1993). Moreover, the mere fact that a certain thing may result from a given set of circumstances is not sufficient. *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999). Therefore, if it is the Office's position that the claimed feature is inherent in the teachings of <u>Laumen</u>, it is respectfully requested that a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art be provided. *See Ex Parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990).

At present, it is respectfully submitted that the outstanding Office Action has not satisfied the burden of proof required by MPEP § 2112. Accordingly, if this rejection is to be maintained, it is respectfully requested that teachings illustrating the inherency of the claimed features in <u>Laumen</u> be provided.

Additionally, as noted above, Claim 10 further recites selecting dynamically, as a function of the at least one dynamic parameter, a distribution of elementary coding step redundancies ....

The outstanding Office Action cites to col. 2, lines 16-37; col. 4, lines 8-40; col. 5, lines 3-65; and steps 1015 and 1016 shown in Figure 3 of <u>Laumen</u> to teach this claimed step. However, as noted above, <u>Laumen</u> does not detect at least one dynamic parameter of the current transmission conditions. As a result, <u>Laumen</u> necessarily fails to disclose or suggest

selecting dynamically, as a function of the at least one dynamic parameter, a distribution of

elementary coding step redundancies.<sup>1</sup>

Therefore, as Laumen does not disclose or suggest the features of Claim 10, from

which Claims 12-19 depend, it is respectfully submitted that the outstanding Office Action

has not provided a *prima facie* case of obviousness. Accordingly, it is respectfully requested

that this rejection be withdrawn.

Moreover, it is respectfully submitted that there is no basis in the teachings of either

<u>Laumen</u> or <u>Wang</u> to support the applied combination. Certainly, the outstanding Office

Action fails to cite to any specific teachings within either of these two references to provide

the required motivation in support of this combination. As a result, it is respectfully

submitted that the applied combination of <u>Laumen</u> and <u>Wang</u> is the result of hindsight

reconstruction in view of the teachings of the present specification, and is improper.

Consequently, in view of the foregoing discussion, it is respectfully submitted that

this application is in condition for allowance. An early and favorable action is therefore

respectfully requested.

Respectfully submitted,

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<sup>1</sup> Because <u>Wang</u> is not relied upon to provide the features identified above as deficient within the teachings of <u>Laumen</u>, <u>Wang</u> is not substantively addressed herewith.

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